

### R E M A R K S

Careful review and examination of the subject application are noted and appreciated.

#### SUPPORT FOR THE SPECIFICATION AMENDMENTS

Support for the specification amendments can be found in the specification, for example, on page 27 lines 7-9 and FIG. 11, as originally filed. As such, no new matter has been added.

#### SUPPORT FOR THE CLAIM AMENDMENTS

Support for the claim amendments can be found in the specification, for example, on page 26 lines 3-19, page 27 lines 1-20, page 28 lines 1-21, page 29 lines 1-20, page 30 lines 1-13 and FIGS. 11-13, as originally filed. Thus, no new matter has been added.

#### OBJECTION TO THE DRAWINGS

While Applicant's representative does not necessarily agree with the requirement to label FIGS. 1-8, in order to further prosecution, FIGS. 1-8 have been labeled "conventional". Replacement FIGS. 1-8 are submitted herewith. As such, the objection to the drawings should be withdrawn.

CLAIM REJECTIONS UNDER 35 U.S.C. §101

While Applicant's representative does not necessarily agree with the rejection of claims 1-12 under 35 U.S.C. §101 as being non-statutory subject matter, the claims have been amended in the interest of advancing the prosecution. As such, the rejection to the claims should be withdrawn.

CLAIM REJECTIONS UNDER 35 U.S.C. §112

The rejection of claim 10 under 35 U.S.C. §112, second paragraph, has been obviated by appropriate amendment and should be withdrawn.

CLAIM REJECTIONS UNDER 35 U.S.C. §102

The rejection of claims 1, 3-8, 12-18 and 20 under 35 U.S.C. §102(e) as being anticipated by Russell et al. '118 (hereafter Russell) is respectfully traversed and should be withdrawn.

Russell concerns a payload mapping in synchronous networks (Title). In contrast, the present invention provides an apparatus comprising an interface connectable to a network. The interface may be configured to generate a frame transmitted on the network. The frame may be configured to store one or more data packets in a plurality of channels. A first of the plurality of channels may be configured to store at least one of two or more

fragments of the one or more data packets. Russell does not appear to disclose or suggest every element as arranged in the claims. As such, the claimed invention is fully patentable over the cited reference and the rejection should be withdrawn.

Claim 1 provides a first of a plurality of channels configured to store at least one of two or more fragments. Applicant's representative respectfully traverses the assertion on page 4, lines 1-2 of the Office Action that IP packets/datagrams are inherently fragmented. Inherency requires certainty of results, not mere possibility (See, e.g., *Ethyl Molded Products Co. v. Betts Package, Inc.*, 9 U.S.P.Q. 2d 1001 (E.D.Ky 1988). See also, *In re Oelrich*, 666 F.2d 578, 581, 212 USPQ 323, 326 (C.C.P.A. 1981)). In contrast, page 4, line 2 of the Office Action admits that the IP packets/datagrams "could be" fragmented, instead of must be fragmented. Since, no certainty exists for fragmentation, the fragmentation is not inherent. Therefore, Russell does not appear to disclose or suggest a first of a plurality of channels configured to store at least one of two or more fragments as presently claimed. As such, the claimed invention is fully patentable over the cited reference and the rejection should be withdrawn.

Claim 13 provides two or more of a plurality of channels are configured to store two or more fragments from a first of one or more data packets, respectively. As traversed above for claim

1, no inherency exists to fragment IP packets/datagrams. Therefore, Russell does not appear to disclose or suggest that two or more of a plurality of channels are configured to store two or more fragments from a first of one or more data packets, respectively, as presently claimed.

Claim 13 further provides the two or more channels are separated by at least one of the plurality of channels. In contrast, Russell appears to be silent regarding channel separations between channels transporting fragments. Therefore, Russell does not appear to disclose or suggest that two or more channels separated by at least one of the plurality of channels as presently claimed. As such, the claimed invention is fully patentable over the cited reference and the rejection should be withdrawn.

Claim 20 provides configuring a first and a second of a plurality of channels to store one or more fragments of one or more data packets. As traversed above for claim 1, no inherency exists to fragment IP packets/datagrams. Therefore, Russell does not appear to disclose or suggest configuring a first and a second of a plurality of channels to store one or more fragments of one or more data packets as presently claimed.

Claim 20 further provides that a first of the fragments in the first channel is linked by an offset pointer to a second of the fragments in the second channel. Despite the assertion on page

4, lines 20-21 of the Office Action, the pointer 905 in FIG. 9 of Russell appears to point to multiple Ethernet frames within the same virtual channel 903, not to fragments in different channels. Therefore, Russell does not appear to disclose or suggest a first of the fragments in the first channel being linked by an offset pointer to a second of the fragments in the second channel as presently claimed. As such, the claimed invention is fully patentable over the cited reference and the rejection should be withdrawn.

Claims 5, 6 and 7 provide offset locators, header locations and trailer locations, respectively. Page 4, line 6 of the Office Action asserts that the pointers of Russell are similar to the claimed offset locators. However, page 4, line 7 of the Office Action asserts that the same pointers of Russell are similar to the claimed header locations. Furthermore, page 4, line 8 of the Office Action asserts that the same pointers of Russell are similar to the claims trailer locations. Since the pointers of Russell cannot simultaneously anticipate three difference claimed locators/locations, the Office Action has failed to establish that Russell discloses or suggests at least two of the offset locators, the header locations and the trailer locations as presently claimed. Claims 15, 16 and 17 provide language similar to claims 5, 6 and 7. As such, at least two of claims 5, 6 and 7 and at

least two of claims 15, 16 and 17 are fully patentable over the cited reference and the rejection should be withdrawn.

CLAIM REJECTIONS UNDER 35 U.S.C. §103

The rejection of claims 2, 10 and 11 under 35 U.S.C. §103(a) as being unpatentable over Russell is respectfully traversed and should be withdrawn.

Claims 2 and 10 depend directly from independent claim 1 which is believed to be allowable. Claim 11 has been cancelled. As such, claims 2 and 10 are fully patentable over the cited reference and the rejection should be withdrawn.

The rejection of claims 9 and 19 under 35 U.S.C. §103(a) as being unpatentable over Russell in view of Ramfelt et al. '315 is respectfully traversed and should be withdrawn.

The Office Action has failed to establish *prima facie* obviousness for failure to provide evidence of motivation to combine the references (MPEP §2142). Furthermore, the fact that references can be combined or modified is not sufficient to establish *prima facie* obviousness (MPEP §2143.01). As such, claims 9 and 19 are fully patentable over the cited references and the rejection should be withdrawn.

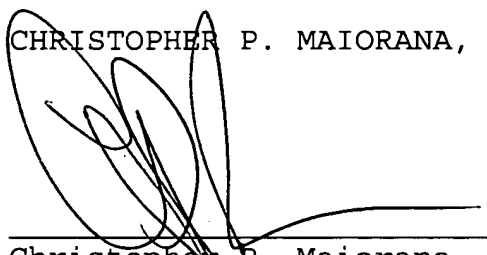
Accordingly, the present application is in condition for allowance. Early and favorable action by the Examiner is respectfully solicited.

The Examiner is respectfully invited to call the Applicant's representative at 586-498-0670 should it be deemed beneficial to further advance prosecution of the application.

If any additional fees are due, please charge our office Account No. 50-0541.

Respectfully submitted,

CHRISTOPHER P. MAIORANA, P.C.



---

Christopher P. Maiorana  
Registration No. 42,829  
24025 Greater Mack, Suite 200  
St. Clair Shores, MI 48080  
(586) 498-0670

Dated: October 15, 2003

Docket No.: 0325.00346